

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
USTelecom Petition for Declaratory Ruling That)	WC Docket No. 13-3
Incumbent Local Exchange Carriers Are Non-)	
Dominant in the Provision of Switched Access)	
Services)	

ORDER

Adopted: December 12, 2016

Released: December 12, 2016

By the Chief, Wireline Competition Bureau:

1. The Wireline Competition Bureau (Bureau) dismisses as untimely the Petition for Reconsideration (Petition) filed by the Ad Hoc Telecommunications Users Committee (Ad Hoc) seeking reconsideration of the Commission's Declaratory Ruling (Declaratory Ruling) in the above-captioned docket, which determined that incumbent local exchange carriers (LECs) are no longer dominant in the provision of interstate switched access services.¹

2. Section 405(a) of the Communications Act of 1934, as amended (the Act),² and Section 1.106(f) of the Commission's rules (Rules), require the filing of a petition for reconsideration with the Commission's Secretary in Washington, D.C. within thirty days from the date of public notice of the final action.³ In this case, public notice of the Declaratory Ruling occurred upon its July 15, 2016 release date, which was also its effective date.⁴ The Petition was filed on August 22, 2016, which is not within thirty days from public notice of the Declaratory Ruling.⁵ Because Ad Hoc failed to timely file its Petition, the Bureau dismisses the Petition on procedural grounds.⁶

3. In making this finding, we observe that Ad Hoc's Petition expressly seeks reconsideration only of the Declaratory Ruling, arguing that the Commission erred in determining that incumbent LECs are non-dominant in providing interstate switched access and that the Commission should first finalize access rate regulations for toll-free originating access minutes.⁷ Ad Hoc did not seek reconsideration of the Commission's Second Report and Order and Order on Reconsideration, which amended the rules to

¹ See Ad Hoc Telecommunications Users Committee Petition for Reconsideration of the Commission's Declaratory Ruling in WC Docket No. 13-3 (filed Aug. 22, 2016) (Ad Hoc Petition for Reconsideration).

² 47 U.S.C. § 405(a).

³ 47 CFR § 1.106(f).

⁴ See 47 CFR § 1.4(b)(2); FCC 16-90 *at para. 211*.

⁵ See United States Telecom Association, Opposition to Petition for Reconsideration (filed Sept. 7, 2016) at 2.

⁶ See *Wash. Broad. Mgmt. Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 6607 (2000) (dismissing a petition for reconsideration filed eight days late); 47 CFR § 1.106(p)(9) ("Petitions for reconsideration of a Commission action that plainly do not warrant consideration by the Commission may be dismissed or denied by the relevant bureau(s) or office(s). Examples include, but are not limited to, petitions that . . . [a]re untimely.").

⁷ See *id.* at 1-2, "Ad Hoc Telecommunications Users Committee ('Ad Hoc') hereby submits this petition for reconsideration of the Commission's Declaratory Ruling in [FCC 16-90]."

establish a framework for discontinuance of legacy voice services under Section 214 of the Act, refined the notice requirements for Section 214, and addressed an unrelated petition filed by U.S. TelePacific Corporation.⁸ Indeed, Ad Hoc's petition predated the publication of these rules in the Federal Register.⁹

4. The Commission's ordering clauses addressed the Commission's actions separately. Pursuant to the Rules, these clauses reflected the non-rulemaking nature of the Declaratory Ruling by providing different effective dates – one for the Declaratory Ruling and the other for the rulemaking items.¹⁰ This distinction is also reflected in the different origins of the two relevant aspects of the order. USTelecom filed the Petition that led to the Declaratory Ruling in 2013, which the Commission docketed as WC Docket No. 13-3, with a public notice seeking comments thereon pursuant to Rule 1.2(b).¹¹ In contrast, the rulemaking aspects of the order were derived from a Notice of Proposed Rulemaking (NPRM) issued November 24, 2014, in WC Docket No. 13-5 and RM-11358 that proposed rule amendments, seeking comments thereon pursuant to Rule 1.415.¹² Ad Hoc filed comments in both proceedings¹³ but, as mentioned above, its Petition seeks review only of the Declaratory Ruling.¹⁴

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act, 47 U.S.C. § 405, and Sections 0.91, 0.291, and 1.106 of the Rules, 47 CFR §§ 0.91, 0.291, 1.106, the Petition for Reconsideration filed by Ad Hoc Telecommunications Users Committee **IS DISMISSED**.

6. **IT IS FURTHER ORDERED** that, pursuant to section 1.102(b)(1) of the Rules, 47 CFR § 1.102(b)(1), this Order **SHALL BE EFFECTIVE** upon release.

FEDERAL COMMUNICATIONS COMMISSION

Matthew S. DelNero
Chief, Wireline Competition Bureau

⁸ See *Technology Transitions; USTelecom Petition for Declaratory Ruling That Incumbent Local Exchange Carriers Are Non-Dominant in the Provision of Switched Access Services; Policies and Rules Governing Retirement Of Copper Loops by Incumbent Local Exchange Carriers*, GN Docket No. 13-5, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, FCC 16-90 (rel. July 15, 2016) (FCC 16-90).

⁹ See Federal Communications Commission, *Technology Transitions, Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*, 81 FR 62632 (Sept. 12, 2016).

¹⁰ *Id.* at paras. 211-13 (The ordering clause for the Declaratory Ruling states that it shall be effective upon release while ordering clauses for the rulemaking portion of the decision explain the effective date shall be thirty days after publication in the Federal Register or later for approvals required by the Paperwork Reduction Act.); 47 CFR § 1.4.

¹¹ See *Wireline Competition Bureau Seeks Comment on United States Telecom Association Petition for Declaratory Ruling That Incumbent Local Exchange Carriers are Non-Dominant in the Provision of Switched Access Services*, WC Docket No. 13-3, Public Notice, DA 13-21 (WCB Jan. 9, 2013).

¹² See *Technology Transitions et al.*, Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14968 (2014).

¹³ See Ad Hoc Comments, WC Docket No. 13-3 (Feb. 25, 2013) and Ad Hoc Comments, GN Docket No. 13-5, RM-11385 (Feb. 5, 2015).

¹⁴ See *supra* note 2.